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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Conscientious objection to military service

Analytical report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted in accordance with Human Rights Council resolution 20/2, in which the Council requested the Office of the United Nations High Commissioner for Human Rights to prepare, in consultation with all States, relevant United Nations agencies, programmes and funds, intergovernmental and non-governmental organizations and national human rights institutions, a quadrennial analytical report on conscientious objection to military service, in particular on new developments, best practices and remaining challenges.

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I. Introduction

1. The Human Rights Council, in its resolution 20/2, requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare, in consultation with all States, relevant United Nations agencies, programmes and funds, intergovernmental and non-governmental organizations and national human rights institutions, a quadrennial analytical report on conscientious objection to military service, in particular on new developments, best practices and remaining challenges.

2. By notes verbales and letters dated 11 January 2017, OHCHR invited the various stakeholders to provide any relevant information pursuant to the request made in resolution 20/2. Contributions were received from 19 Member States, from all regions, six national human rights institutions and 18 non-governmental organizations. All the contributions will be available for public consultation on a web page on the OHCHR site;[1] the previous reports of the High Commissioner on conscientious objection to military service, including the previous analytical report of June 2013, will also be directly accessible from the site.

3. The present report outlines the international legal framework, with particular attention paid to developments since 2013 (sect. II), as well as State law and practice, both in terms of best practices (sect. III) and remaining challenges (sect. IV). Lastly, the report contains conclusions and recommendations concerning laws, policies and practices relating to conscientious objection to military service (sect. V).

II. International legal framework, in particular new developments

A. Right to conscientious objection to military service

4. The right to conscientious objection to military service is based on article 18 of the International Covenant on Civil and Political Rights, which guarantees the right to freedom of thought, conscience and religion or belief. This right includes freedom to have or to adopt a religion or belief of one's choice, and freedom, either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching. While the Covenant does not explicitly refer to a right to conscientious objection, in 1993 the Human Rights Committee stated that such a right could be derived from article 18, inasmuch as the obligation to use lethal force might seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.[2]

5. In its jurisprudence adopted subsequent to the issuance of general comment No. 22 (1993), the Human Rights Committee found a right to conscientious objection in a series of Views on individual communications.[3] In *Jong-nam Kim et al. v. Republic of Korea*, the Committee reiterated that the right to conscientious objection to military service was inherent to the right to freedom of thought, conscience and religion, entitling any individual to exemption from compulsory military service if the latter could not be reconciled with the individual's religion or beliefs.[4] Since this right must not be impaired by coercion, the majority of the Committee members held that repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibited the use of arms, was incompatible with the absolutely protected right to hold a

[1] See www.ohchr.org/EN/Issues/Pages/ListofIssues.aspx.

[2] See general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 11.

[3] For an overview of individual communications relating to conscientious objection issued up to 2012, see A/HRC/23/22, paras. 8-13 and *Conscientious Objection to Military Service* (United Nations publication, Sales No. E.12.XIV.3).

[4] See communication No. 1786/2008, Views adopted on 25 October 2012, para. 7.4.

religion or belief (*forum internum*) pursuant to article 18 (1) of the Covenant.[5] However, four Committee members favoured in their concurring individual opinions the Committee's earlier approach, which had treated conscientious objection as an instance of manifestation of belief in practice (*forum externum*), and when considering article 18 (3), those Committee members concluded that the State party had not provided a sufficient justification for denying the right of conscientious objection.[6] Furthermore, the Special Rapporteur on freedom of religion or belief and the Working Group on Arbitrary Detention also continue to view conscientious objection to military service as a manifestation of one's religion or belief.[7]

6. In the case of *Young-kwan Kim et al. v. Republic of Korea*, the Human Rights Committee in 2014 found a violation of article 18 (1) of the Covenant, and also held that imprisoning the 50 Jehovah's Witnesses concerned as punishment for refusing military service amounted to arbitrary detention under article 9. In that context, the Committee noted in paragraph 7.5 of those Views that just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant, was arbitrary, so was detention as punishment for legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant.

7. In 2015 and 2016, the Human Rights Committee adopted Views on 10 individual communications concerning conscientious objectors, finding, inter alia, violations of their right to be treated with humanity and with respect for the inherent dignity of the human person under article 10 of the Covenant and of the authors' freedom of thought, conscience and religion.[8] The Committee also recalled that the fundamental character of the freedoms enshrined in article 18 (1) of the Covenant was reflected in the fact that the provision could not be derogated from, even in time of public emergency, as stated in article 4 (2) of the Covenant.

8. In concluding observations adopted in 2013 and 2014, the Human Rights Committee reiterated that domestic laws should provide for conscientious objections in a manner consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protected freedom of conscience of non-believers.[9] The Committee also stressed that alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection.[10] The terms "religion" and "belief" are to be broadly interpreted, since article 18 of the Covenant protects theistic, non-theistic and atheistic

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[5] Ibid., para. 7.5, and communication Nos. 1853/2008 and 1854/2008, *Atasoy and Sarkut v. Turkey*, Views adopted on 29 March 2012, appendix II ("The right to refuse to kill must be accepted completely.").

[6] See *Jong-nam Kim et al. v. Republic of Korea*, appendices II-IV. See also communications No. 2179/2012, *Young-kwan Kim et al.*, Views adopted on 15 October 2014, appendix I; No. 2218/2012, *Abdullayev v. Turkmenistan*, Views adopted on 25 March 2015, appendices I and II; No. 2221/2012, *Mahmud Hudaybergenov v. Turkmenistan*, Views adopted on 29 October 2015, appendix; No. 2222/2012, *Ahmet Hudaybergenov v. Turkmenistan*, Views adopted on 29 October 2015, appendix; No. 2223/2012, *Japparov v. Turkmenistan*, Views adopted on 29 October 2015, appendix; No. 2219/2012, *Nasyrlayev v. Turkmenistan*, Views adopted on 15 July 2016, annex; No. 2220/2012, *Aminov v. Turkmenistan*, Views adopted on 14 July 2016, annex; No. 2224/2012, *Matyakubov v. Turkmenistan*, Views adopted on 14 July 2016, annex; No. 2225/2012, *Nurjanov v. Turkmenistan*, Views adopted on 15 July 2016, annexes I and II; and No. 2226/2012, *Uchetov v. Turkmenistan*, Views adopted on 15 July 2016, annex.

[7] See A/HRC/7/10/Add.2, paras. 46 and 56; A/HRC/10/8/Add.4, para. 51; A/HRC/10/21/Add.1, pp. 144-145; A/HRC/19/60/Add.2, para. 54; A/HRC/23/51, p. 28; A/HRC/28/66/Add.2, para. 63; Working Group on Arbitrary Detention opinion No. 42/2015, para. 42; Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford University Press, 2016), pp. 265-275 and 288-291.

[8] *Abdullayev v. Turkmenistan*, *Mahmud Hudaybergenov v. Turkmenistan*, *Ahmet Hudaybergenov v. Turkmenistan*, *Japparov v. Turkmenistan*, *Nasyrlayev v. Turkmenistan*, *Aminov v. Turkmenistan*, *Matyakubov v. Turkmenistan*, *Nurjanov v. Turkmenistan*, *Uchetov v. Turkmenistan* and communication No. 2227/2012, *Yegenduryyew v. Turkmenistan*, Views adopted on 14 July 2016.

[9] See, for example, CCPR/C/KGZ/CO/2, para. 23.

[10] See CCPR/C/UKR/CO/7, para. 19.

beliefs, as well as the right not to profess any religion or belief, and its application is not limited to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.[11] Therefore, a State would be in violation of article 18 of the Covenant if it recognized the right to conscientious objection only for members of registered religious organizations whose teaching prohibits the use of arms.[12]

9. Some States that have not ratified the Covenant do not recognize the universal applicability of the right to conscientious objection to military service. For example, Singapore reiterated in its contribution to the present report that Human Rights Council resolution 20/2 went beyond what was prescribed in international law and applicable human rights instruments. It also indicated that article 29 of the Universal Declaration of Human Rights recognized that the exercise of the rights and freedoms of an individual was subject to limitations to meet the requirements of public order and the general welfare of the society. Singapore further stated that national defence was a fundamental sovereign right under international law; where individual beliefs or actions ran counter to such a right, the right of a State to preserve and maintain national security must prevail.[13] Cuba, which has signed but not ratified the Covenant, considered in its contribution that there were no international human rights instruments that established a right to conscientious objection to military service, which should be understood as a notion based on the interpretations and general comments of the Human Rights Committee.

10. In a series of resolutions that were adopted without a vote, both the Human Rights Council and the Commission on Human Rights recognized the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights.[14]

11. At the regional level, the Advocate General at the Court of Justice of the European Union, in an opinion delivered in 2014, highlighted that the Charter of Fundamental Rights of the European Union in its article 10 (2) identified and explicitly recognized the right to conscientious objection, in accordance with the national laws governing the exercise of that right.[15] In 2016, the European Court of Human Rights found a violation of freedom of thought, conscience and religion in a case where the interview of a conscientious objector by the relevant special board had taken place in conditions that did not guarantee procedural efficiency and the equal representation required by domestic law.[16] Furthermore, the Ibero-American Convention on the Rights of Youth, in its article 12 (1), provides that young people have the right to conscientious objection to obligatory military service.[17]

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[11] See general comment No. 22, para. 2.

[12] See CCPR/C/KGZ/CO/2, para. 23.

[13] See also A/HRC/23/G/6, annex; A/HRC/23/22, para. 15; E/CN.4/2006/51, para. 18; E/CN.4/2002/188, annex.

[14] See Council resolutions 24/17 and 20/2, and Commission on Human Rights resolutions 2004/35, 2002/45, 2000/34, 1998/77, 1995/83, 1993/84, 1991/65 and 1989/59. The first related Commission resolution, 1987/46, was adopted by a vote of 26 in favour, 2 against and 14 abstentions.

[15] See Court of Justice of the European Union, case C-472/13, *Shepherd v. Bundesrepublik Deutschland*, opinion of Advocate General Sharpston delivered on 11 November 2014, para. 52.

[16] European Court of Human Rights, *Papavasilakis v. Greece*, application No. 66899/14, judgement of 15 September 2016. For an overview of regional jurisprudence see A/HRC/23/22, paras. 16-24, and Ozgür Heval Çınar, *Conscientious Objection to Military Service in International Human Rights Law* (Palgrave Macmillan, 2013), pp. 95-156.

[17] See the regional overview by Ignacio Perclló in *Convención Iberoamericana de Derechos de los Jóvenes: Balance y reflexiones — a cinco años de su entrada en vigor*, pp. 56-60. Available at www.oij.org/file_upload/publicationsItems/document/20130114165345_51.pdf.

B. Right of serving members of the armed forces, including conscripts and volunteers, to make claims of conscientious objection to military service

12. The Human Rights Council and, previously, the Commission on Human Rights, have repeatedly pointed out that persons performing military service may develop conscientious objections, and affirmed the importance of the availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, for all persons affected by military service.[18] In its resolution 24/17, the Council acknowledged that an increasing number of States recognized conscientious objection to military service not only for conscripts but also for those serving voluntarily, and encouraged States to allow applications for conscientious objection prior to, during and after military service, including reserve duties.

13. The Special Rapporteur on freedom of religion or belief reiterated in observations on communications and mission reports that conscientious objection may develop over time, and even after a person has already participated in military training or activities.[19] Three special procedure mandate holders sent a joint urgent appeal concerning a conscientious objector who had left the army without authorization following her decision that she could no longer participate in the war in Iraq or any other conflict for moral reasons.[20] The Human Rights Committee had recommended that States parties ensure that the law clearly stipulates that individuals have the right to conscientious objection to military service, which they should be able to exercise before the commencement of military service and at any stage during military service.[21]

14. At the level of the European Union, the Advocate General at the Court of Justice stressed that the manner in which the conscientious objector was recruited was irrelevant, since the wording "refusal to perform military service" in Council Directive 2004/83/EC[22] encompassed anyone in military service, both conscripts and enlisted recruits, and that all military personnel were covered, including logistical or support personnel.[23] The Court of Justice ruled in 2015 that it did not appear that the measures incurred by a soldier because of his refusal to perform military service, such as the imposition of a prison sentence or discharge from the army, might be considered, having regard to the legitimate exercise, by that State, of its right to maintain an armed force, so disproportionate or discriminatory as to amount to acts of persecution; however, it was for the national authorities to ascertain whether that was indeed the case.[24]

C. Selective conscientious objection

15. In its Guidelines on International Protection No. 10, issued in December 2013, the Office of the United Nations High Commissioner for Refugees (UNHCR) stressed that the right to conscientious objection also applied to partial or selective objectors.[25] Such objectors believe that the use of force is justified in some circumstances but not in others and that therefore it is necessary to object in those other cases, whereas pacifists object to all use of armed force or participation in all wars. The General Assembly implicitly recognized one type of selective objection in its resolution 33/165, in which it called upon Member States to grant asylum or safe transit to another State to persons compelled to leave

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[18] Council resolution 24/17 and Commission resolutions 1998/77, 1995/83 and 1993/84.

[19] See E/CN.4/2006/5/Add.1, para. 139; A/HRC/19/60/Add.1, para. 56; A/HRC/22/51/Add.1, para. 69.

[20] See A/HRC/23/51, p. 28.

[21] See CCPR/C/KAZ/CO/1, para. 23; CCPR/C/CHL/CO/5, para. 13; CCPR/C/SVK/CO/3, para. 15.

[22] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

[23] See *Shepherd v. Bundesrepublik Deutschland*, opinion of Advocate General Sharpston, paras. 32 and 35.

[24] See case C-472/13, *Shepherd v. Bundesrepublik Deutschland*, judgment of the Second Chamber of 26 February 2015, para. 57.

[25] See paras. 3 and 11 of the Guidelines.

their country of nationality solely because of a conscientious objection to assisting in the enforcement of apartheid through service in military or police forces. The Working Group on Arbitrary Detention and the Special Rapporteur on freedom of religion or belief have also taken up cases of selective conscientious objectors.[26]

D. Decision-making process for applications for conscientious objector status

16. In their resolutions, the Human Rights Council and, previously, the Commission on Human Rights, have called upon States that do not accept claims of conscientious objection to military service as valid without inquiry to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection to military service is genuinely held in a specific case.[27] In those resolutions and in general comment No. 22 of the Human Rights Committee, it was stressed that there should be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs.

17. The Special Rapporteur on freedom of religion or belief has also provided guidance on the required institutional and procedural safeguards for conscientious objectors. The decision concerning their status should, when possible, be made by an impartial tribunal set up for that purpose or by a regular civilian court, with the application of all the legal safeguards provided for in international human rights instruments. There should always be a right to appeal to an independent, civilian judicial body. The decision-making body should be entirely separate from the military authorities, and the conscientious objector should be granted a hearing, be entitled to legal representation and be able to call relevant witnesses.[28]

E. Prohibition of repeated trial or punishment of conscientious objectors

18. The Human Rights Council has stressed that repeated punishment of conscientious objectors for refusing a renewed order to serve in the military may amount to punishment for the same crime, in breach of the legal principle *ne bis in idem*.[29] The Working Group on Arbitrary Detention and the Special Rapporteur on freedom of religion or belief also have held that repeated incarceration of conscientious objectors violated article 14 (7) of the Covenant.[30]

19. In its Views on five individual communications, adopted in 2015 and 2016, the Human Rights Committee found violations of freedom of thought, conscience and religion and of the double jeopardy principle, since the authors of the communications had been tried and punished twice under the same provision of the Turkmen Criminal Code on account of the fact that they had objected to, and refused to perform, compulsory military service.[31]

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[26] E/CN.4/2005/6/Add.1, p. 18; A/HRC/23/51, p. 28.

[27] Commission resolution 1998/77; Council resolution 24/17. See also Human Rights Committee general comment No. 22, para. 11.

[28] See E/CN.4/1992/52, para. 185; A/HRC/6/5, para. 22; A/HRC/19/60/Add.1, para. 56 and A/HRC/22/51/Add.1, para. 69. See also CCPR/C/ISR/CO/4, para. 23.

[29] Council resolution 24/17. See also Human Rights Committee general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 55; CCPR/C/GRC/CO/2, paras. 37-38.

[30] E/CN.4/2001/14/Add.1, pp. 54-55; E/CN.4/2005/6/Add.1, p. 22; A/HRC/10/8/Add.4, paras. 50 and 68; A/HRC/16/53/Add.1, para. 391.

[31] See *Abdullayev v. Turkmenistan*, *Nasyrlayev v. Turkmenistan*, *Aminov v. Turkmenistan*, *Matyakubov v. Turkmenistan* and *Nurjanov v. Turkmenistan*.

F. Alternative service

20. States may, if they so wish, establish alternative service in place of compulsory military service, which is also recognized in article 8 (3) (c) (ii) of the Covenant, which provides that any national service required by law of conscientious objectors is not to be included within the meaning of the terms forced or compulsory labour. However, there is no requirement under international law for States to establish such a system, and they can simply excuse conscientious objectors from military service with no further action required from such persons.

21. Furthermore, the Human Rights Council and, previously, the Commission on Human Rights, set out criteria for alternative service, urging States to provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive character.[32] The Human Rights Committee has provided examples of conditions for alternative service that are "punitive in nature", including the requirement to perform such services outside places of permanent residence, the receipt of low salaries, which are below the subsistence level for those who are assigned to work in social organizations, and the restrictions in freedom of movement for the persons concerned.[33] Moreover, States need to ensure accessibility and non-discrimination when providing any alternative to military service, which is problematic, for example when an exemption fee can be paid instead of doing military service,[34] thus discriminating against those conscientious objectors who cannot afford to pay the fee.

22. Under international human rights law, there are no strict time limits for the permissible duration of alternative service. However, any longer duration in comparison to military service may be discriminatory if the additional time for alternative service is not based on reasonable and objective criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service.[35] The Human Rights Committee and the Special Rapporteur on freedom of religion or belief have recommended that States reduce the length of alternative civilian service to that of military service or at least to reduce the difference of their duration.[36]

23. With regard to time limits for applying for conscientious objector status, the Special Rapporteur on freedom of religion or belief emphasized in two mission reports that conscientious objection might develop over time, even after a person had already participated in military training or activities, and thus strict deadlines should be avoided.[37]

G. Claims to refugee status

24. Pursuant to article 14 of the Universal Declaration of Human Rights, everyone has the right to seek and to enjoy asylum from persecution. The Human Rights Council and, previously, the Commission on Human Rights, encouraged States, subject to the circumstances of the individual case meeting the other requirements of the definition of a refugee as set out in the Convention relating to the Status of Refugees of 1951 and the Protocol thereto of 1967, to consider granting asylum to those conscientious objectors to military service who have a well-founded fear of persecution in their country of origin

[32] Council resolution 24/17; Commission resolution 1998/77. The Human Rights Committee has recommended providing for alternative service of a civilian nature outside the military sphere and not under military command for conscientious objectors (see CCPR/C/TKM/CO/2, para. 41).

[33] See CCPR/C/RUS/CO/6 and Corr.1, para. 23.

[34] See CCPR/C/MNG/CO/5, para. 23.

[35] See Human Rights Committee communication No. 666/1995, *Foin v. France*, Views adopted on 3 November 1999, para. 10.3.

[36] See CCPR/CO/79/RUS, para. 17; A/56/253, annex, para. 28.

[37] See A/HRC/19/60/Add.1, para. 56; A/HRC/22/51/Add.1, para. 69.

owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service.[38]

25. The Guidelines on International Protection No. 10 issued by UNHCR in 2013 replace its earlier position on certain types of draft evasion (issued in 1991) and provide legal interpretive guidance for governments, legal practitioners, decision makers, the judiciary and UNHCR staff carrying out the determination of mandate refugee status. The guidelines outline five common types of claims: (a) objection to State military service for reasons of conscience; (b) objection to military service in conflict contrary to the basic rules of human conduct; (c) conditions of State military service; (d) forced recruitment and/or conditions of service in non-State armed groups; and (e) unlawful child recruitment.[39]

26. In paragraph 9.3 of its Views on communication No. 2007/2010, *X v. Denmark*, adopted in 2014, the Human Rights Committee referred to credible sources indicating that draft evaders risked serious ill-treatment upon repatriation to Eritrea and noted the author's assertion that he would have to refuse to undertake military service on the basis of his conscience. Since the Committee held that his deportation from Denmark to Eritrea, if implemented, would constitute a violation of article 7 of the Covenant (prohibition of torture, cruel, inhuman or degrading treatment or punishment), it did not further examine his claims under article 18.

III. Best practices

A. Alternative service

27. In its resolution 24/17, the Human Rights Council welcomed initiatives to make information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, widely available to all persons affected by military service. In that connection, one contribution for the present report referred to Austria, where the necessary forms for applying for recognition as a conscientious objector could be found on the website regarding obligatory military service.[40]

28. As noted in another contribution, Norway has suspended alternative service for conscientious objectors, who are simply exempted from military service.[41] Another example of best practice was the non-punitive length of alternative service in Denmark (and before the suspension of conscription also in Albania, Germany, Italy and Slovenia), where the normal durations of military and alternative service had been made equal.

29. In 2013, following several judgments of the European Court of Human Rights, Armenia adopted amendments to its law on alternative service, as well as enabling regulations, which has led to the release of imprisoned conscientious objectors in that country. As of February 2017, more than 250 Jehovah's Witnesses had served alternative service in Armenia. According to one contribution, all parties, including the directors of the alternative civilian service locations, are highly satisfied with the outcome of this change.[42]

B. Recognition of the right to conscientious objection to military service for conscripts and those serving voluntarily

30. The Law on service in the armed forces of Bosnia and Herzegovina provides that persons contracting to serve in the armed forces may terminate their contract prior to the date mentioned in the contract. Each year a number of persons, including those who no

[38] Council resolution 24/17; see also Commission on Human Rights resolution 1998/77.
[39] See paragraphs 17-41 of the Guidelines.
[40] Contribution from the International Fellowship of Reconciliation.
[41] Contribution from War Resisters' International.
[42] Contribution from the Office of the General Counsel of Jehovah's Witnesses.

longer want to serve because of conscientious objection, reportedly terminate their contracts.[43]

31. In Slovenia, article 38 of the Military Service Act explicitly provides that the right to conscientious objection to military service may also be exercised by a military conscript during and after the completed military service in accordance with the Act.[44]

C. Applications during mobilizations and total objection to military service

32. In its concluding observations on the sixth periodic report of Finland, adopted in July 2013, the Human Rights Committee welcomed the legislative changes allowing for applications for non-military service during mobilizations and serious disturbances, and the fact that total objectors could be exempted from unconditional imprisonment.[45] The Non-Military Service Act in Finland contains provisions on the processing of non-military service applications in special conditions, including during serious disturbances to normal conditions and during mobilization. Pursuant to the Act on monitoring sentences (No. 330/2011), a monitoring sentence may be imposed instead of unconditional imprisonment, and enables electronically supervised home arrest instead of a prison term for total objectors declining both military and non-military service.[46]

33. With regard to Ukraine, one contribution referred to a judgment of 23 June 2015 of the High Specialized Court for Civil and Criminal Cases, which was not subject to appeal, applying the jurisprudence of the European Court of Human Rights in the case of *Bayatyan v. Armenia* and affirming that the rights of conscientious objectors are protected even if a country mobilizes for armed conflict and not just when there are routine call-ups for military service.[47]

D. Fair, independent and impartial procedures to consider applications for conscientious objection to military service; non-discrimination between conscientious objectors

34. In its resolution 24/17, the Human Rights Council welcomed the fact that some States accepted claims of conscientious objection to military service as valid without inquiry. One contribution highlighted that in Finland (and in Germany before the abolition of conscription) an application bearing a declaration of conscientious objection following the accepted format would automatically lead to the recognition of a claim of conscientious objection.[48]

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[43] Contribution from the ombudspersons of Bosnia and Herzegovina.

[44] Contribution from Slovenia.

[45] See CCPR/C/FIN/CO/6, para. 14.

[46] See CCPR/C/FIN/6, paras. 30 and 153; International Fellowship of Reconciliation and Conscience and Peace Tax International submission to the Human Rights Committee at its 108th session, available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fFIN%2f14402&Lang=en.

[47] Contribution from the Office of the General Counsel of Jehovah's Witnesses.

[48] Contribution from the International Fellowship of Reconciliation.

IV. Remaining challenges

A. Lack of recognition or implementation of the right to conscientious objection to military service and alternative service; repeated trial or punishment

35. In its concluding observations on the fourth periodic report of Azerbaijan, adopted in November 2016, the Human Rights Committee recommended that Azerbaijan adopt without delay the legislation necessary to give effect in practice to the constitutionally recognized right to conscientious objection to military service, without limitation on the category of conscientiously held beliefs, and that it provide for alternative service of a civilian nature for conscientious objectors and repeal all sanctions against them.[49]

36. Since there is no alternative civilian service in the Plurinational State of Bolivia, the Human Rights Committee recommended, in its concluding observations of October 2013, that the State promulgate legal provisions that recognize the right to conscientious objection to military service and establish an alternative to military service that is accessible to all conscientious objectors and is not punitive or discriminatory in terms of its nature, cost or duration.[50]

37. In November 2016, the same Committee welcomed the decisions of the Constitutional Court of Colombia in which the Court concluded that the practice of indiscriminate round-ups with the aim of identifying young persons who had failed to resolve their military status and taking them to assembly points entailed carrying out arbitrary arrests (judgments No. C-879 of 2011 and No. T-455 of 2014). While Colombia had asserted that the practice did not take place, the Committee was concerned by reports of recent round-ups and recommended that Colombia adopt stronger measures to ensure that no one is detained arbitrarily, particularly for the purpose of military recruitment, by, inter alia, improving the training provided to members of the security forces; that all allegations of arbitrary detention are investigated promptly, thoroughly and impartially; and that the perpetrators are prosecuted and punished.[51]

38. In its concluding observations of February 2015 on the fourth and fifth periodic reports of Eritrea, the Committee on the Elimination of Discrimination against Women urged the State party to discontinue the indefinite period of national service and the forced enrolment at the Sawa Military Training Centre, reduce the national service obligation to the original 18 months, legally recognize the right to conscientious objection and ensure that women who have completed their service are immediately demobilized.[52] In its report published in May 2016, the commission of inquiry on human rights in Eritrea noted that the military/national service programme had an open-ended and arbitrary duration, which routinely exceeded the 18 months provided for in a decree issued in 1995, frequently by more than a decade, which was not justified in the commission's view.[53]

39. In July 2013, the Human Rights Committee reiterated its concerns to Finland that the preferential treatment accorded to Jehovah's Witnesses had not been extended to other groups of conscientious objectors and recommended that Finland fully acknowledge the right to conscientious objection.[54]

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[49] See CCPR/C/AZE/CO/4, para. 35.

[50] See CCPR/C/BOL/CO/3, para. 21. See also the contribution from the Ombudsman's Office of the Plurinational State of Bolivia.

[51] See CCPR/C/COL/CO/7, paras. 34-35. See also the contributions from Colombia and the Ombudsman's Office of Colombia.

[52] See CEDAW/C/ERI/CO/5, para. 9.

[53] See A/HRC/32/47, paras. 35 and 67. See also the contribution from the Office of the General Counsel of Jehovah's Witnesses.

[54] See CCPR/C/FIN/CO/6, para. 14. See also the contribution from the Finnish Union of Conscientious Objectors.

40. In July 2016, the same Committee noted that Kazakhstan had failed to review, as previously recommended, its legislation in order to recognize a person's right to conscientious objection to military service and to provide for alternative military service. Kazakhstan should ensure the legal recognition of conscientious objection to military service, and provide for alternative service of a civilian nature for conscientious objectors.[55]

41. The same Committee reiterated to Kyrgyzstan in March 2014 its previous concerns that conscientious objection to military service was limited only to members of registered religious organizations whose teaching prohibited the use of arms. Kyrgyzstan should ensure that any legal amendments provide for conscientious objections in a manner consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers.[56]

42. In concluding observations adopted in November 2015, the Human Rights Committee expressed concern at the failure of the Republic of Korea to implement the Committee's Views, notably in the numerous cases concerning conscientious objection, and called upon the State to immediately release all conscientious objectors condemned to a prison sentence for exercising their right to be exempted from military service.[57] It also noted with concern that conscientious objectors' personal information might be disclosed online, and recommended ensuring that conscientious objectors' criminal records are expunged, that those who had been sentenced to prison for exercising their right to be exempted from military service are provided with adequate compensation and that their personal information is not publicly disclosed.[58] The concluding observations were quoted in a communication sent to the Republic of Korea by the Special Rapporteur on freedom of religion or belief, who noted that conscientious objectors who refused to perform the military service also bore the consequences of having a criminal record, which hindered their capacity to find employment in the private sector. Furthermore, their stigmatization as holders of a criminal record and "traitors" reportedly had other consequences in the social sphere, such as difficulties for marriage and ostracization from their families.[59]

43. In its concluding observations on the second periodic report of Tajikistan, adopted in July 2013, the Human Rights Committee reiterated its previous concerns and recommended that the State take the measures necessary to ensure that the law recognizes the right of individuals to exercise conscientious objection to compulsory military service, and establish, if it so wished, non-punitive alternatives to military service.[60]

44. The same Committee regretted that conscientious objectors and persons supporting conscientious objection in Turkey were still at risk of being sentenced to imprisonment and that, as they maintained their refusal to undertake military service, they were practically deprived of some of their civil and political rights, such as freedom of movement and the right to vote. Thus Turkey should adopt legislation recognizing and regulating conscientious objection to military service, so as to provide the option of alternative service, without the choice of that option entailing punitive or discriminatory effects and, in the meantime, suspend all proceedings against conscientious objectors and suspend all sentences already imposed.[61] In 2014, Turkey replied that there were no plans to introduce a civilian alternative to compulsory military service; the Committee, in its report on follow-up to concluding observations, assessed that response as "E: The response indicates that the measures taken are contrary to the Committee's recommendations".[62]

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[55] See CCPR/C/KAZ/CO/2, paras. 45-46.

[56] See CCPR/C/KGZ/CO/2, para. 23.

[57] See CCPR/C/KOR/CO/4, paras. 6 and 45.

[58] Ibid., paras. 44-45. See also the contributions from Connection e.V., World Without War and the Office of the General Counsel of Jehovah's Witnesses.

[59] A/HRC/32/53, p. 26; allegation letter of 11 December 2015, available at https://spdb.ohchr.org/hrdb/32nd/public_-_AL_Rep_Korea_11.12.15_(4.2015).pdf. See also contribution from the Quaker United Nations Office.

[60] See CCPR/C/TJK/CO/2, para. 21; see also CCPR/CO/84/TJK, para. 20.

[61] See CCPR/C/TUR/CO/1, para. 23.

[62] CCPR/C/112/2, pp. 18-19. See also contribution from the Association for Conscientious Objection.

45. In its concluding observations on the second periodic report of Turkmenistan, adopted in March 2017, the Human Rights Committee stated that it remained concerned about the continued failure to recognize the right to conscientious objection to compulsory military service and the repeated prosecution and imprisonment of Jehovah's Witnesses refusing to perform compulsory military service. The Committee recommended that Turkmenistan revise its legislation without undue delay with a view to clearly recognizing the right to conscientious objection to military service, provide for alternative service of a civilian nature outside the military sphere and not under military command for conscientious objectors, and halt all prosecutions of individuals who refuse to perform military service on grounds of conscience and release those who are currently serving prison sentences.[63]

46. In 2013, the Human Rights Committee expressed its concern to Ukraine that no measures appeared to have been taken to extend the right of conscientious objection against mandatory military service to persons who held non-religious beliefs grounded in conscience and beliefs grounded in all religions. In this context, the Committee stressed that alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection, and should be neither punitive nor discriminatory in nature or duration by comparison with military service.[64]

47. In his 2015 report on his mission to Viet Nam, the Special Rapporteur on freedom of religion or belief noted that the right to conscientious objection to compulsory military service was not recognized at the domestic level and that there was no option of an alternative civilian service for individuals who objected, for conscientious reasons, to taking up arms. That contravened the right to freedom of thought, conscience and religion or belief, which provided protection, consistent with article 18 (3) of the Covenant, against being forced to act contrary to genuinely held religious or moral belief.[65]

48. While in the previous analytical report of 2013 it was noted that a trend to abolish or suspend compulsory military service had reduced considerably issues associated with compulsory and alternative service,[66] the trend seems to have been reversed. Since 2014, conscription has reportedly been introduced for the first time in several States (Kuwait, Qatar and the United Arab Emirates) or reinstated (Georgia, Lithuania and Ukraine), and some Governments announced plans to reintroduce compulsory military service (Croatia and Sweden).[67]

B. Restrictions on the right of freedom of expression for those who publicly support conscientious objectors and conscientious objection to military service

49. During the oral dialogue with the State delegation on the initial report of Turkey, several members of the Human Rights Committee raised concerns about the fate of conscientious objectors and those freely expressing their support for conscientious objectors, arguing that the terms of article 318 of the Criminal Code on alienating the public from the institution of military service, which was apparently used to prosecute conscientious objectors, seemed incompatible with freedom of expression.[68] The delegation of Turkey responded that due consideration would be given to the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression.[69] In its judgment of 15 November 2016, in the case of *Savda v. Turkey (No. 2)*, application No. 2458/12, the

[63] See CCPR/C/TKM/CO/2, paras. 40-41.
[64] See CCPR/C/UKR/CO/7, para. 19.
[65] See A/HRC/28/66/Add.2, para. 63.
[66] See A/HRC/23/22, para. 40.
[67] See contributions from the International Fellowship of Reconciliation and from War Resisters' International.
[68] See CCPR/C/SR.2929, paras. 4, 6 and 27.
[69] Ibid., para. 36.

European Court of Human Rights ruled that a violation of freedom of expression had occurred, ordering just satisfaction of €2,500 in non-pecuniary damages to the applicant. The case concerned the applicant's criminal conviction to a five-month prison sentence for having read out a statement to the press entitled: "We are in solidarity with the Israeli conscientious objectors".

50. In Ukraine, a journalist was arrested in February 2015 on charges of high treason and preclusion of lawful activity of the Armed Forces of Ukraine for publishing an anti-mobilization video, in which he had announced his refusal to be called up and had appealed to others to do likewise. While the first instance court sentenced him to three years and six months of imprisonment, the appeal court overturned his conviction in July 2016.[70]

C. Conscientious objection for those serving voluntarily in the armed forces

51. One contribution stressed that currently there were no provisions in the Greek legislation recognizing the right to conscientious objection for professional soldiers and that, additionally, such recognition was not possible in practice in view of a decision by the Minister of National Defence that established in 2005 that applications submitted after the enlistment in the Armed Forces of those interested were not accepted.[71]

D. Unjust procedures during application consideration

52. In its concluding observations on the fourth periodic report of Israel, adopted in October 2014, the Human Rights Committee remained concerned at the proceedings before the special committee in charge of recommending to the competent authorities whether to grant or reject an individual's application for exemption from compulsory military service for reasons of conscience and at the special committee's lack of independence, given that its membership comprised only one civilian member and all the rest served as officials of the armed forces. The Human Rights Committee recommended that the special committee should be made fully independent, and that proceedings before it should include hearings and provide for a right to appeal against negative decisions.[72]

53. In November 2015, the Human Rights Committee reiterated its concerns to Greece about the composition of the special committee that assessed applications for conscientious objector status and its reported lack of independence and impartiality, especially when hearings were held without all members present, and recommended that Greece consider placing the assessment of such applications under the full control of civilian authorities.[73] In May 2016, two recommendations on conscientious objection were made in the context of the universal periodic review; however, Greece did not accept those recommendations.[74] In September 2016, for the first time, the European Court of Human Rights found that there had been a violation of the right to freedom of thought, conscience and religion of a conscientious objector in a State that recognized conscientious objection. In the case of *Papavasilakis v. Greece*, the Court held that the lack of independence in the decision-making process meant that refusal to recognize the complainant's application for conscientious objector status violated article 9 of the Convention for the Protection of

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[70] See contribution from War Resisters' International. OHCHR reports on the human rights situation in Ukraine for the periods 16 February to 15 May 2015 (para. 72), 16 May to 15 August 2015 (para. 71), 16 August to 15 November 2015 (para. 63), 16 November 2015 to 15 February 2016 (para. 141), 16 February to 15 May 2016 (para. 117) and 16 May to 15 August 2016 (para. 115), available at www.ohchr.org/EN/Countries/ENACARegion/Pages/UAReports.aspx.

[71] Contribution from the Greek National Commission for Human Rights.

[72] See CCPR/C/ISR/CO/4, para. 23.

[73] See CCPR/C/GRC/CO/2, paras. 37-38.

[74] See A/HRC/33/7, paras. 136.15 and 136.16 and A/HRC/33/7/Add.1, p. 3. During the second cycle of the universal periodic review, from 2012 to 2016, out of a total of 26 recommendations relating to conscientious objection, only 4 were accepted by the States under review, whereas 22 recommendations on conscientious objection were noted (see http://s.upr-info.org/2nTJXrY).

Human Rights and Fundamental Freedoms. The Court considered that a final decision by the Minister of Defence, on the basis of a draft ministerial decision following a board's proposal, did not afford the requisite safeguards of impartiality and independence, especially where the person concerned was interviewed by a board of which a majority of the members were senior army officers.[75] Furthermore, according to the Greek Ombudsman, there is a constant practice of unequal treatment of those objecting on ideological grounds in comparison to those objecting on religious grounds, which is also reflected in official statistics between 2007 and 2015, showing a recognition rate for conscientious objectors on religious grounds of above 96 per cent, while the recognition rate on ideological grounds is usually around or below 50 per cent.[76]

E. Disproportional length of alternative service

54. A longer length of the civilian alternative service to military service for conscientious objectors in comparison to the length of military service infringes upon articles 18 and 26 of the Covenant if it is not based on reasonable and objective grounds. In several concluding observations adopted between 2013 and 2015, the Human Rights Committee encouraged several States to ensure that the length of service alternative to military service required for conscientious objectors was not punitive in nature.[77] With regard to the stipulation made by Kyrgyzstan of a shorter period of military and alternative service for persons with higher education, the Committee recommended that the State establish the length of military and alternative service on a non-discriminatory basis.[78]

55. Responding to the concerns of a member of the Human Rights Committee that periods of alternative civilian service that exceeded the standard length of military service could amount to a form of punishment against conscientious objectors, the delegation of Cyprus noted during its oral dialogue with the Committee in March 2015 that persons recognized as conscientious objectors could serve either 33 months of alternative social service or 24 months of alternative military service, explaining that the period of time served for alternative military service was shorter than that served for alternative social service owing to the more onerous tasks performed and the fact that the individual was away from home during his or her service.[79] In the report on his mission to Cyprus, the Special Rapporteur on freedom of religion or belief had also raised the issue that alternative military service was, at that time, between seven and nine months longer than the period of time for military service.[80] In July 2016, a new law was passed that reduced the period of military service from 24 months to 14 months and that of alternative social service to a maximum of 19 months.[81]

F. Conscientious objection in disputed territories not under the Government's control

56. In paragraph 7 of its Guidelines on International Protection No. 10, UNHCR notes that only States can require military conscription, whereas international law does not entitle non-State armed groups, whether or not they may be the de facto authority over a particular part of the territory, to recruit on a compulsory or forced basis. Yet, persons who live in such a disputed territory that is not under the Government's control often face human rights

[75] *Papavasiliakis v. Greece*.

[76] See contributions from the Greek National Commission for Human Rights and from the Association of Greek Conscientious Objectors.

[77] See CCPR/C/AUT/CO/5, paras. 33-34; CCPR/C/BOL/CO/3, para. 21; CCPR/C/FIN/CO/6, para. 14; CCPR/C/GRC/CO/2, para. 38; CCPR/C/UKR/CO/7, para. 19.

[78] See CCPR/C/KGZ/CO/2, para. 23.

[79] See CCPR/C/SR.3143, paras. 21 and 29.

[80] See A/HRC/22/51/Add.1, para. 67.

[81] Contribution from the European Bureau for Conscientious Objection.

protection gaps in view of a lack of recognition of the right to conscientious objection and a high degree of militarization owing to historical and geopolitical backgrounds.[82]

57. For example, with regard to the northern part of Cyprus, the Special Rapporteur on freedom of religion or belief noted that the absence of provisions concerning conscientious objection meant in practice that objectors faced the risk of punitive measures, and he referred to information received about six individuals who had submitted written refusals to take part in military training. He recommended that the de facto authorities recognize the right to conscientious objection to military service and ensure that conscientious objectors have the option of performing alternative civilian service that is compatible with their reasons for conscientious objection and does not have punitive effects.[83] One contribution for the present report noted that a "parliamentary committee" was investigating the possibility of instituting alternative service for conscientious objectors in the northern part of the island and had taken evidence from representatives of the conscientious objection movement in September 2016.[84]

58. The Special Rapporteur on freedom of religion or belief has also expressed concern at the situation in the Transnistrian region of the Republic of Moldova, where individuals who did not participate in regular military exercises were punished, without the possibility of being exempted from military service or of performing an alternative service.[85] The Special Rapporteur urged the "authorities" of the Transnistrian region of the Republic of Moldova to cease without delay practices of detaining persons objecting on grounds of religion or conscience to military service, and to develop rules for alternative service for such conscientious objectors.[86] In 2013, it was reported that persons known to be conscientious objectors had not been called up for military service in the Transnistrian region of the Republic of Moldova,[87] and that rules for a civilian alternative service for conscientious objectors had been adopted.[88]

59. In contributions for the present report it was noted that no progress had been made for conscientious objectors in other disputed territories in the South Caucasus region.[89]

V. Conclusions and recommendations

60. **Under international law, the right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion or belief. The present report shows that there have been important legal developments in recognition of conscientious objection to military service at the international, regional and national levels since the United Nations High Commissioner for Human Rights presented the previous analytical report to the Human Rights Council in 2013.**

61. **Some States have adopted laws and regulations that have led to the release of imprisoned conscientious objectors or that equalized the durations of military and alternative service. Furthermore, some national legislation explicitly provides for conscientious objection during military service and after the service has been completed. The rights of conscientious objectors have also been recognized when a country mobilizes for armed conflict.**

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[82] Bielefeldt, Ghanea and Wiener, *Freedom of Religion or Belief*, pp. 286–288.

[83] See A/HRC/22/51/Add.1, paras. 68 and 87.

[84] Contribution from the International Fellowship of Reconciliation.

[85] See A/HRC/19/60/Add.2, paras. 93 and 99.

[86] Ibid., para. 87. See also the Special Rapporteur's follow-up table, pp. 18–21, available at www.ohchr.org/Documents/Issues/Religion/FollowUp/cyprus.pdf.

[87] Thomas Hammarberg, Senior Expert, "Report on human rights in the Transnistrian region of the Republic of Moldova" (2013), available at www.un.md/publicdocgen/41, p. 43.

[88] Contributions from the International Fellowship of Reconciliation and from the Office of the General Counsel of Jehovah's Witnesses.

[89] Contributions from the European Bureau for Conscientious Objection, the International Fellowship of Reconciliation and the Office of the General Counsel of Jehovah's Witnesses.

62. At the same time, challenges remain, as some States continue not to recognize or fully implement the right to conscientious objection to military service in practice. Cases of punishment and repeated trial of unrecognized conscientious objectors are sources of concern, as is their stigmatization as holders of a criminal record and public disclosure of their personal information. Furthermore, there remain undue restrictions on freedom of expression for those who support conscientious objectors or who support the right of conscientious objection. Moreover, in some States that have recognized conscientious objection, the alternative service arrangements are not accessible to all conscientious objectors and are punitive or discriminatory in nature or duration by comparison with military service.

63. All persons affected by military service should have access to information about the right to conscientious objection and the means of acquiring objector status. Those who support conscientious objectors or who support the right of conscientious objection to military service should fully enjoy their freedom of expression. States should ensure that the right to object applies both to pacifists and to selective objectors who believe that the use of force is justified in some circumstances but not in others. Conscripts and volunteers should be able to object before the commencement of military service as well as at any stage during and after military service.

64. Alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of their religious or non-religious beliefs. States that do not accept claims of conscientious objection as valid without any inquiry process should establish independent and impartial decision-making bodies to determine whether a conscientious objection to military service is genuinely held in a specific case. After any decision on conscientious objector status, there should always be a right to appeal to an independent and civilian judicial body. States should ensure that alternative service is compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive character. Any longer duration in comparison to military service is permissible only if the additional time for alternative service is based on reasonable and objective criteria.

65. States must ensure that no one is detained arbitrarily, particularly in indiscriminate round-ups with the aim of identifying young persons who have failed to resolve their military status. States should release individuals who are imprisoned or detained solely on the basis of their conscientious objection to military service. Conscientious objectors should not be repeatedly punished for not having obeyed a renewed order to serve in the military. Personal information of conscientious objectors must not be disclosed publicly by the State and their criminal records should be expunged. States must neither discriminate against conscientious objectors in relation to their civil, cultural, economic, political and social rights nor stigmatize them as "traitors". Refugee status should be granted to those who have a well-founded fear of persecution in their country of origin owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service.